



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/167766

PRELIMINARY RECITALS

Pursuant to a petition filed August 03, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 01, 2015, at Sheboygan, Wisconsin.

The issue for determination is whether an error has been made in the calculation of Petitioner's FoodShare allotment, especially as it relates to the deduction of medical expenses.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Cheri Nennig

Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. Petitioner filed this appeal to contest a reduction in her FoodShare allotment was reduced from \$139.00 to \$68.00, effective August 1, 2015.

3. Petitioner's FoodShare case was reviewed in July. The agency determined that Petitioner's income is \$857.00 per month from Social Security.
4. In the allotment determination formula Petitioner was credited with a standard deduction of \$155.00, a rent expense of \$435.00 and a standard utility allowance for a phone - \$30.00. She was also given a deduction for medical expenses in the amount of \$112.10; previously this deduction was \$270.39. Dental bills submitted as part of the review were paid in full prior to the start of the certification period effective August 1, 2015.
5. Petitioner's FoodShare household consists of one person.

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

The gross income limit for a household of one is \$1946. *FSH, §8.1.1.1.* Petitioner's gross income is less than this.

If a household passes the gross income test, the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$155 per month for a household of 1-3 persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction – the utility expense requires that a household have an actual utility obligation and is a standard deduction based on that obligation (\$446 where a person pays for heat, \$30 if a person only pays for a phone); the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.3 and 8.1.3.*

The change here is based entirely on the deduction for the excess medical expense. The following describes how that deduction works:

4.6.4.3 Budgeting Medical Expenses including MA Deductible Expenses

Medical expenses for elderly, blind, or disabled members may be entered through one of the following budgeting methods:

- Budgeted as a recurring monthly expense,
- Budgeted as a one time lump sum expense for one month,
- Budgeted for the remainder of a FS certification period,
- Budgeted based on the terms of a payment plan, or
- Averaged over the time period a one-time medical expense was intended to cover (such as a prepaid or met medical deductible).

Under all of the budgeting options, the obligation amount (amount incurred) is counted rather than the amount paid. The member may or may not pay the bill so it is important to make sure that the expense is not counted more than once.

A monthly medical expense obligation budgeted based on the terms of a payment plan can be claimed for as long as the original payment plan is in place. Amounts still due after they were budgeted during a previous FS certification period may not be included as part of the monthly expense.

The averaging of the one-time medical expense cannot extend past the certification period in which the expense was originally counted.

Except when an expense is averaged during a certification period, the expense should be budgeted starting with the month it is billed or otherwise becomes due, regardless of when the member intends to pay the expense. Allow the expense in the next possible benefit month.

For instructions on how to enter allowable medical expenses into CWW, see Process Help, Section [18.2.4](#) Other Medical Expenses - Medical Expenses Page.

FSH, §4.6.4.3.

Petitioner contends that she has reported medical expenses consistently over prior FoodShare eligibility periods and was never informed that the bills paid in the previous certification period could not be used or she would not have paid the dental bills that she expected to be a deduction here. The agency allows that the excess medical expense deduction may not have been done correctly in the past but that applied correctly bills paid for in the prior certification period cannot be used into the next certification period.

Here it appears that the medical expense deduction was not correctly applied in the past but the Division of Hearings and Appeals cannot ignore the law and policy governing the FoodShare program and create a remedy. The Division of Hearings and Appeals does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977).* The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

That the agency calculation of Petitioner's FoodShare benefits is correct.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of September, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 29, 2015.

Sheboygan County Department of Human Services
Division of Health Care Access and Accountability